IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1088 OF 1995

1. Mr.Domnic Alex Fernandes]
since deceased:]

1A. John Domnic Fernandes,]
age 39 years,]

1B. David Domnic Fernandes,]
age 51 years,]

1C. Alex Domnic Fernandes,]
age 45 years,]

1D. Ms.Carmeline Fernandes,]
age 58 years,]
resident of Room No.8]
T.40 Juhu Koliwada,]
H.B. Gawde Road,]
Santacruz (West),]
Mumbai - 400 049.]

2. Mr.Prakash Shankar Talib,]
age 47 years, residing at]
Room No.1.]

3. Mrs.Filsu Salu D’souza,]
since deceased:]

3A. Miss.Santana Sebestian]
Mascarenhas, age 53 years,]
Resident of Room No.7]
T.40 Juhu Koliwada,]
H.B.Gawde Road, Santacruz]
(West), Mumbai-400 049.]

4. Mrs.Jerome John Fernandes,]
age 26 years, residing at]
Room no.3.]

5. Mrs.Manika Keshu D’souza,]
age 60 years, residing]
at Room No.4.]

6. Mr.Joe S. Coutinho,]
age 55 years, residing]

at Room No.5.]

7. Mr.Manuel Santan Carvelho,]
age 49 years, residing]
at Room No.6.]

8. Mrs.Natoline Sebastian]
Mascarenhas,]
Since deceased :]

8A. Marie Santan Elias Fernandes,]
age 62 years, Resident of]
Room No.2, T.40 Juhu Koliwada,]
H.B. Gawde Road, Santacruz]
(West), Mumbai - 400 049.]

9. Mr.Mary Johnna Dias,]
since deceased :]

9-a. Mrs.Sabina D’souza,]
Residing at Virar, Agashi.]

9-b. Mrs.Eliza D’souza,]
Residing at Opp.Gawade]

Building, Hirabuwa Marg,]
Juhu, Koliwada,]
Mumbai-49.]

9-c. Mrs.Margaret Dias,]
Residing at Nalasopara.]

9-d. Ms.Philomena Dias,]
R/a. Room No.9, Gawade]
Building, Hirabuwa Marg,]
Juhu Koliwada,]
Mumbai-400 049.]

9-e. Mr.Balthazar Dias,]
R/a. Room No.9, Gawade]
Building, Hirabuwa Marg,]
Juhu Koliwada,]
Mumbai - 400 049.]

9-f. Mrs.Deodita Raman,]
R/a. Hirabuwa Marg, Juhu]
Koliwada, Mumbai-400 049.]

9-g. Mrs.Regina M. Anthony,]

R/a. Room No.9, Gawade]
Building, Hirabuwa Marg,]
Juhu Koliwada,]
Mumbai - 400 049.]

10. Mr.Rajnikant Narayan]
Ajgaonkar, age 57 years,]
residing at Room No.11..] ..PETITIONERS.

-VERSUS-

1. The Union of India,]

2. The Director,]
SAFEMA/NDPS, Bombay,]
Government of India,]
Ministry of Finance,]
Department of Revenue,]
Office of the Competent]
authority & Administrator,]
Smugglers & Foreign Exchange]
Manipulators (Forfeiture of]
Property) Act 1976 &]
Narcotics Drugs & Psychotropic]
Substances Act, 1985,]
Mittal Court, ‘C’ Wing,]

3rd Floor, Nariman Point,]
Bombay - 400 021.]

3. State of Maharashtra.] ..RESPONDENTS.

..

Mr.R.V.Govilkar, Adv. with Mr.Sarang Aradhye, Adv. for the Petitioners.
Mr.J.C.Satpute, Adv. for Respondent Nos.1 & 2.
Mr.A.S.Gadkari, APP, for the State.

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CORAM : R.M.S.KHANDEPARKAR, &
SMT.V.K.TAHILRAMANI, JJ.

DATED : 11TH JULY, 2007.

ORAL JUDGMENT (PER R.M.S.KHANDEPARKAR,J.) :

1. Heard Mr.Govilkar learned Advocate for the Petitioners, Mr.Satpute learned Advocate for the respondent Nos.1 & 2 and Mr.Gadkari learned APP for the State.

2. The petitioners are seeking to challenge the action sought to be taken by the respondents under Section 19 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, hereinafter called as SAFEMA for brevity, mainly on the ground that the petitioners are lawful tenants in respect of flats in the building and that they cannot be evicted therefrom without following due process of law which is otherwise required to be followed in case of eviction of tenants of a building.

3. Few undisputed facts relevant for the decision are that : there existed a building called "Gawde Building" at Juhu Koliwada, Mumbai which belonged to one Mr.Francis Coelho and consisted of a chawl wherein the petitioners and their ancestors were residing as the tenants. One Shri.Krishna Budha Gawde purchased the said building sometime in 1965 and thereafter reconstructed the building in 1972. It was pursuant to the purchase of the premises by Shri.Krishna Budha Gawde that the building came to

be known as the "Gawde Building". Under the agreements with the said Shri.Krishna Budha Gawde, the petitioners occupied the reconstructed building and continued to pay the rent to said Krishna Budha Gawde. The petitioners were served with a notice dated 5th July, 1995 by the office of the respondent No.2 calling upon the petitioners to vacate the respective rooms and hand over the possession thereof to the respondents. The notice was replied to by the petitioners through their advocate on 19th July, 1995 raising the issue of tenancy in relation to the premises and being protected under the law of land applicable to them and further that they were not parties to the SAFEMA proceedings against the landlord of the said building, nor they had any opportunity of being heard in the said proceedings at any time. Under notice dated 22nd August, 1995 the respondents informed the petitioners that the proceedings which were initiated under the SAFEMA against the said Shri.Krishna Budha Gawde were concluded whereby the property in question stood forfeited to the Government and even the Appellate Tribunal had confirmed the said forfeiture.

4. It is the contention of the petitioners that they being the tenants in respect of the premises in question, they are protected by the law of land and they cannot be evicted from the said premises, without they are heard in the matter and their occupation in the premises is terminated by due process of law applicable to them. It is their further case that they being not parties to the SAFEMA proceedings, they having not been heard in the SAFEMA proceedings and they having not been offered an opportunity of being heard at any stage of the said proceedings, the forfeiture of landlord's property would not amount to or result in a deprivation of their tenancy rights in relation to the said premises and to hold otherwise would result in denying their fundamental and statutory right assured to them. In any way, it is their contention that even assuming that upon the forfeiture of the property it vests in the Government free from, in order to enable the petitioners to defend their right it is necessary for the respondents to offer appropriate opportunity by issuing necessary show cause notice

before proceeding to take action in accordance of Section 19 of SAFEMA, and denial thereof would virtually amount to failure on the part of respondents to comply with the basic principles of natural justice inasmuch as that the petitioners would be dispossessed from the premises without even being offered an opportunity of being heard in the matter.

5. On the other hand, it is the case of the respondents that consequent to the conclusion of the proceedings under the SAFEMA the properties of late Krishna Budha Gawde stand forfeited to the Central Government and the same include the properties in question and, therefore, it vests free from all encumbrances in favour of the Central Government. It is their further case that consequent to the forfeiture of the property, the alleged tenancy rights of the petitioners came to an end and they cannot independently claim any right to the said premises and further that Section 19 of SAFEMA clearly authorises the competent authority to take possession of such premises by evicting whoever found in possession

of the forfeited property.

6. The learned Advocate appearing for the petitioners placed reliance in the decisions of the Apex Court in the matters of **C.B.Gautam Vs. Union of India and others : (1993) 1 SCC 78**; **Attorney General for India & Ors. Vs. Amratlal Prajivandas & Ors : (1994) 5 SCC 54**; **Fatima Mohd. Amin (Smt) (Dead) through L.Rs. Vs. Union of India & another : (2003) 7 SCC 436**; and in the decision of Division Bench of this Court in the matter of **Narayan Vittappa Kudva Vs. Union of India and another : 2002(2) MLJ 290**. The learned Advocate appearing for the petitioners submitted that though there is no specific provision under SAFEMA for issuance of show cause notice to the person in possession of the property alleged to have been forfeited under SAFEMA, the Section 19 has to be read down in that regard in order to ensure that the fundamental or statutory rights guaranteed to such occupants are not disturbed or violated, and eviction is not effected without following the due process of law and no injustice is caused in that regard to such occupant of such

property. Reliance is sought to be placed in that regard in the decision of the Apex Court in the matter of **Fatima Amin** (supra). He has further submitted that the tenants of such building would not be either "associates" or "relatives" within the meaning of the said expression under SAFEMA and being so the provisions of SAFEMA cannot be held to be applicable to the tenants in occupation of such building or property and in that regard reliance is placed in the decision in the matter of **C.B. Gautam** (supra). He has further submitted that in view of the decision of the Division Bench of this Court in the matter of **Narayan Kudva** (supra), tenants of such building cannot be considered as having been covered under SAFEMA and, therefore, merely because the property is forfeited under SAFEMA, it would not empower the respondents to evict the petitioners without following due process of law and the rules and regulations which are required to be followed for the purpose of eviction of a tenant. In that regard attention is also drawn to a decision in the matter of **Amratlal's case** (supra). He has further submitted that SAFEMA itself requires an

opportunity of being heard even to the associates, therefore by no stretch of imagination it can be presumed that the tenants in occupation of the property can be evicted without offering an opportunity of being heard. He has further submitted that there is no presumption under the law that the holders of the said property are necessarily to be the relatives or associates of the smugglers and therefore they cannot be directed to be evicted without an opportunity of being heard by issuing necessary show cause notice before taking action in terms of Section 19 of SAFEMA. In any case the provisions of SAFEMA nowhere disclose that forfeiture of the property under SAFEMA would automatically result in termination of tenancy rights of the occupants of such property. He has also submitted that the principle which is adopted in relation to the property acquired under the Income Tax Act will have to be applied to the case arising under SAFEMA, while considering the point as to whether the property vests in the Government free from encumbrances and if so at what extent.

7. The learned Advocate appearing for the respondents on the other hand has submitted that the petitioners are not the holders of the property nor there is any claim in that regard; and that their claim is that of tenants of the building in the said property. He has submitted that once the property is forfeited under SAFEMA, all the rights and interest in such property come to an end and the property vests in the Central Government free from all encumbrances. He has further submitted that under the Income Tax Act there is no forfeiture of the property but the property stands acquired on account of violation of certain statutory provisions, whereas in case of SAFEMA the property stands forfeited. The rent legislation in force in the State is not applicable to the properties belonging to the Central Government. Even the provisions of the Transfer of Property Act would not be attracted once the property stands forfeited in favour of the Central Government. He has further submitted that a person can be said to be a holder of the property only in case he is able to disclose title thereto having acquired either on the basis of

some document or by adverse possession, and the tenant cannot be said to be a holder in that sense.

8. In **C.B. Gautam's** case (supra) attention was drawn specifically to paragraph-34 of the said decision, while canvasing the argument in relation to the concept of "free from all encumbrances". The Apex Court therein was dealing with a matter arising under the Income Tax Act, 1961 and the matter related to challenge to the validity of the provisions of Chapter XX-C inserted in the Income Tax Act, 1961 by the Finance Act of 1986. In paragraph-34 of the decision, while dealing with the argument that the provisions of the relevant chapter were arbitrary and violative of the provisions of fundamental rights insofar as that the order of compulsory purchase under Section 269-UD of the said chapter has an effect of vesting the property in the Central Government free from all encumbrances or leasehold rights the value of which might not be reflected in the apparent consideration mentioned in the agreement for sale, and after considering the scope of the

relevant Section held :

> "an order for compulsory purchase results in the rights of holders or encumbrances and leasehold rights being destroyed or significantly diminished. In a given case it might happen that the property is intended to be sold under an agreement to sell subject to encumbrances and leasehold rights, and very often agreements to sell the immovable property do not provide that the property sold would be free from encumbrances or leasehold rights. In such a case, the apparent consideration, even if it is equivalent to the fair market value, would be indicative of the market value of the property subject to such encumbrances. If, in such a case an order for compulsory purchase is made, the result would be that the property would be compulsorily purchased and the amount to be paid

for the purchase would be only equal to the apparent consideration and this apparent consideration would not take into account the value of the encumbrances on the property like mortgages and so on or the leasehold rights. It is well known that a property may be heavily encumbered and its value can be considerably depressed if it were sold subject to encumbrances. It is equally well known that a property in respect of which there is a subsisting lease for a substantial period of time would fetch a comparatively low price because the purchase thereof would not carry with it the right to possession or occupation during the subsistence of the leasehold interests. In such cases, the amount of apparent consideration could be even less than the value of the encumbrances or the leasehold interests. An order for compulsory

> purchase in such cases would necessarily result in gross injustice to the encumbrance holders and lessees and to their being deprived of their rights without their being in any way involved in the attempt at a tax evasion. It, therefore, appears to us difficult to uphold the last part of sub-section (1) of Section 269-UE insofar as it provides that the property in respect of which an order under sub-section (1) of Section 269-UD is made shall vest in the Central Government *free of all encumbrances*."

. Having held as above, the Apex Court further ruled that :

> " In our opinion the expression "free of all encumbrances" is liable to be struck down as arbitrary, without any rational nexus with the object of the

legislation in question and violative of Article 14 of the Constitution."

9. While reading the decision of the Apex Court in **C.B.Gautam's** case, one has to bear in mind the provisions of Article 300-A of the Constitution of India which clearly provides that, **"**no person shall be deprived of his property save by authority of law**"**. It is to be noted that the action contemplated under Section 269-UE of the Income Tax Act is in the nature of compulsory purchase of the property. Compulsory purchase of the property of the owners on account of certain defaults in tax matters by the owners of the property or the holders of the property could result in grave injustice to the encumbrance holders and lessees if they are deprived of their rights without being in any manner compensated in relation to their rights in or to the property inspite of the fact that they were not involved in tax evasion by owner of the property and that therefore the Apex Court ruled that the expression "free from all encumbrances" from Section 269-UE shall be liable to be struck down as being

arbitrary and without having any rational nexus and violative of the Article 14 of the Constitution. It is sought to be argued on behalf of the petitioners that same principle will have to be applied while considering the provisions of Section 7(3) of SAFEMA.

10. Sub-section 3 of Section 7 of SAFEMA undoubtedly provides that once the proceedings under SAFEMA in relation to a property against the concerned person are concluded adverse to the interest of that person, such property stands forfeited to the Central Government "free from all encumbrances". The SAFEMA has been enacted to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators and for matters connected therewith or incidental thereto, and that for effective prevention of smuggling activities and foreign exchange manipulations which are having a deleterious effect on the national economy, it is necessary to deprive persons engaged in such activities and manipulations of their ill-gotten gains. Besides such persons have been augmenting

such gains by violations of wealth-tax, income-tax, or other laws or by other means and have thereby been increasing their resources for operating in clandestine manner, as also that such persons have in many cases been holding the properties acquired by them through such ill gotten gains in the names of their relatives, associates and confidants, that the SAFEMA came to be enacted.

11. Section 4 of SAFEMA provides prohibition of holding illegally acquired property. Sub-section (1) of Section 4 thereafter provides that as from the commencement of the Act SAFEMA, it shall not be lawful for any person to whom SAFEMA applies to hold any illegally acquired property either by himself or through any other person on his behalf. Sub-section (2) of Section 4 provides that where any person holds any illegally acquired property in contravention of the provision of sub-section (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of SAFEMA. Section 5 of SAFEMA deals with the functions of the competent authority under SAFEMA. Section 6 thereafter deals with

subject of notice of forfeiture under SAFEMA. Sub-section (1) of Section 6 provides that if, having regard to the value of the properties held by any person to whom SAFEMA applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, any other information or material available to it as a result of action taken under section 18 or otherwise, the competent authority has reason to believe which is recorded in writing that all or any of the properties are illegally acquired properties, it may serve a notice upon such person calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than 30 days, to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under SAFEMA. Pursuant to the issuance of such notice, the matter then proceeds

in terms of Section 7 and in case the findings of the competent authority happens to be that the property is illegally acquired it is declared as such and thereupon it stands forfeited to the Central Government free from all encumbrances in terms of Section 7(3) of SAFEMA.

12. Section 7 of the SAFEMA reads thus :-

> "7. Forfeiture of Property in certain cases.- (1) The competent authority may, after considering the explanation, if any, to the show-cause notice issued under section 6, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are

illegally acquired properties.

(2) Where the competent authority is satisfied that some of the properties referred to in the show-cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding accordingly under sub-section (1).

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Act, stand forfeited to the Central Government free from all encumbrances.

> (4) Where any shares in a company stand forfeited to the Central Government under this Act, then the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or the articles of association of the company, forthwith register the Central Government as the transferee of such shares."

13. Section 8 clarifies that in such proceedings, the burden of proving that any property specified in the notice served under Section 6 is not illegally acquired property shall be on the person affected and to whom the notice is issued. Section 9 speaks of fine in lieu of forfeiture which can be offered by an affected person. Section 10 relates to procedure in relation to certain trust properties. Section 11 declares certain transfers to be null and void. It provides that pursuant to issuance of a notice

under Section 6 or under Section 10, any property, referred to in such notice, is transferred by any mode whatsoever such transfer shall, for the purpose of the proceedings under SAFEMA, to be ignored and if such property is subsequently forfeited to the Central Government under Section 7, then, the transfer of such property shall be deemed to be null and void. Section 12 deals with the constitution of appellate tribunal. Section 13 deals with the notice or order not to be invalid for error in description. Section 14 relates to bar of jurisdiction and provides that no order passed or declaration made under SAFEMA shall be appealable except as provided therein and no civil Court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any competent authority is empowered by or under SAFEMA to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under SAFEMA. Section 15 provides that the competent authority and the Appellate Tribunal under SAFEMA shall have the powers of the civil Court for the purposes of

specified thereunder which includes summoning and enforcing the attendance of any person, discovery and production of documents, receipt of evidence and affidavits, requisitioning of any public record, issuance of commissions for examination of witnesses or documents, or any other matter which may be prescribed under the rules. Section 16 empowers the competent authority to procure information from any authority which is relevant or useful for any purpose under SAFEMA. Besides, in terms of sub-section (2) of Section 16, any officer of the Income-tax Department, the Customs Department or the Central Excise Department or any officer of enforcement appointed under the FERA, may *suo motu* furnish any information which in the opinion of the officer may be useful to the competent authority. Section 17 requires certain officers to assist the competent authority and the Appellate Tribunal. Section 18 deals with the power of the competent authority to require certain officers to exercise certain powers.

14. Section 19 deals with the subject of taking over possession of the forfeited property and it

reads thus :

> **19. Power to take possession.-** (1) Where any property has been declared to be forfeited to the Central Government under this Act, or where the person affected has failed to pay the fine due under sub-section (1) of section 9 within the time allowed therefor under sub-section (3) of that section, the competent authority may order the person affected as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the competent authority or to any person duly authorised by it in this behalf within thirty days of the service of the order.
>
> (2) If any person refuses or fails to comply with an order made under sub-section (1), the competent authority may take possession of the property and may for that purpose use

such force as may be necessary.

(3) Notwithstanding anything contained in sub-section (2), the competent authority may, for the purpose of taking possession of any property referred to in sub-section (1), requisition the service of any police officer to assist the competent authority and it shall be the duty of such officer to comply with such requisition.

15. Section 20 speaks of the powers to rectify the mistakes apparent from record. Section 21 provides that no finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under SAFEMA. Section 22 speaks of mode of service of notices and orders under SAFEMA. Section 23 provides protection to the officers under SAFEMA for any action taken by them in good faith.

16. Section 24 deals with the overriding effect

of SAFEMA. It provides that "the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force".

17. Section 25 provides that the provisions of SAFEMA would not apply to certain properties held in trust. Section 26 empowers the Government to make rules to carry out provisions of SAFEMA and in terms of Section 27 the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Ordinance, 1975 stood repealed.

18. Considering the scheme of SAFEMA it would be at once clear that the same has been enacted essentially to divest the property or assets accumulated by smugglers and foreign exchange manipulators on the strength of ill-gotten gains and by investing money acquired through activities which have deleterious effect on the national economy. Obviously, therefore, Section 7 (3) of SAFEMA in clear terms provides for forfeiture of the property illegally acquired by such persons and it further provides that on forfeiture of such

property it would vest in the Central Government free from all encumbrances. At this stage it is pertinent to note that challenge thrown to SAFEMA as it being constitutionally ultra vires was thrown out by the Apex Court in the case of **Amratlal Prajivandas** (supra) In other words, all the provisions of SAFEMA are held to be not violative of the provisions of the Constitution of India.

19. As against the decision of the Apex Court holding the provisions of SAFEMA to be not violative of the Constitution, in **C.B. Gautam's** case the Apex Court has specifically struck down the expression "free from all encumbrances" in Section 269-UD of the Income Tax Act, 1961. As already observed above, the Apex Court has struck down the said expression taking into consideration the fact that the said expression was added to a provision dealing with the result which follows consequent to the compulsory purchase of the property on account of tax evasion by the party to whom the property belonged to. The Income Tax Act, 1961, does not deal with the aspect of

forfeiture of the property acquired with the help of ill-gotten money and particularly raised through activities which have deleterious effect on the national economy. The provisions of Income Tax Act essentially relate to the obligation of the persons earning income in a country to pay certain amount of tax, out of the income earned by them and for consequence in case of failure to comply with such obligation. However, the object of SAFEMA is essentially to deny the smugglers and foreign exchange manipulators any right to enjoy the benefits of ill-gotten money as well as forbid them from utilising such assets for generation of further income and for that therefore there is a provision for forfeiture of such assets. As against this, in case of compulsory purchase of property, it is essentially on account of failure to disclose the correct market value of the property purchased and specially for disclosure of lesser consideration for transfer made with the intention of evading the tax liability to the extent of non-disclosure of the real amount of consideration. However, such compulsory purchase requires the Government to pay the price for such

purchase. In other words, though, it is a compulsory purchase, the Government is under obligation to pay the consideration for transferring the property in the name of the Government on account of the act on the part of the transferor or transferee in not disclosing the true consideration of the property which is equivalent to the fair market value and that itself shows that the transfer is subject to payment of consideration to the persons having interest in the property. It is not merely transfer of property, but, it is transfer in the form of purchase which involves payment of consideration. It is totally different from the concept of forfeiture which in terms of Section 7 of SAFEMA does not include any consideration for transfer of the property in favour of the Central Government.

20. Black’s Law Dictionary defines the term "purchase" to mean - "Transmission of property from one person to another by voluntary act and agreement, founded on a valuable consideration". The expression "forfeiture" is defined in the

Black's Law Dictionary to mean - "A comprehensive term which means a divestiture of specific property without compensation; it imposes a loss by the taking away of some preexisting valid right without compensation. A deprivation or destruction of a right in consequence of the nonperformance of some obligation or condition. Loss of some right or property as a penalty for some illegal act. Loss of property or money because of breach of a legal obligation." Obviously, the term "forfeiture" signifies divestiture of the property without compensation and deprivation of rights thereto as a consequence of nonperformance of the obligations or conditions which may be statutorily be provided for.

21. Being so, the contention that applying the law laid down by the Apex Court in **C.B. Gautam's** case, the provisions of Section 7(3) may be read down to mean that the expression "free from all encumbrances" would confine only to the ownership rights and it would not include any other interest like leasehold interest in the property, cannot be accepted. Firstly, the decision of the Apex Court

in **Amrutlal's** case which clearly holds SAFEMA to be not invalid or ultra vires to Constitution is binding on this Court; and secondly the decision in **C.B.Gautam's case** declaring the expression "free from all encumbrances" from Section 269-UD to be ultra vires to Constitution has been defined taking into consideration the scheme of the Income Tax Act, 1961 which is different from that of SAFEMA.

22. The learned Advocate appearing for the petitioners further referring to the decision of the Division Bench of this Court in **Narayan Kudva's** case (supra) has strenuously argued that the law that the tenants or the lessees in the properties stated to be forfeited under SAFEMA are not bound by the said provisions of the Act which stands well established by that decision and that therefore it is not open to the respondents to act in contravention of the said decision. At the outset, it is to be noted that in **Narayan Kadva's** case (supra), there was no dispute that the occupants of the premises were the tenants and their tenancy continued even after forfeiture of the property. In paragraph-11 of the decision in

the case of **Narayan Kadva** (supra), it has been observed thus :-

> "11. As far as forfeiture of the property in question in the present case is concerned, it appears that the property which stood in Gawde's name has been found to be property liable for forfeiture under the provisions of SAFEMA and therefore forfeited by the Central Government in accordance with the provisions of the SAFEMA, the petitioner is not really concerned with the forfeiture of the property of his landlord that is Gawde to the Central Government and its vesting in the Central Government. In fact, he claims that he has, after its vesting in the Central Government paid monthly rent to the Central Government and is a tenant. It is, therefore, clear that before the petitioner's rights in the property are affected, there must be

> a proper enquiry as to the nature of his right, i.e. whether it is a tenancy right or otherwise and must be preceded by an appropriate show cause notice which offers the petitioner an opportunity to demonstrate his legal status as regards the property in question. There must be an order determining the petitioners status in the said property.
>
> . In the present case, we find that the impugned order does not determine whether the petitioner is actually a tenant as claimed by him and, if so, whose tenant and what has become to his tenancy right, if any."

23. The Division Bench was dealing with the matter wherein the petitioner had challenged the order passed by the competent authority under Section 19 of SAFEMA. Apparently in **Narayan Kudva's** case, there was no dispute as to whether

the occupants of the building in that case continued to be the tenants or not, nor there was any dispute as to whether a person is a tenant in occupation or not can be decided by the competent authority by dealing with the matter under Section 19 or not, nor the point as to whether consequent to the order under Section 7(3), such interest including the interest of tenancy survives or not, nor the point as to the effect of the order passed under Section 7(3) under SAFEMA, were the subject matters of adjudication in **Narayan Kudwa's** case. It is well settled law that a decision in a case has to be understood based on the facts of the case, points which arose for consideration, the contentions which were advanced in relation to such points and the findings given by the adjudicating authority i.e. Court on such points. No observation in a judgment can be read devours the context in which it is made and ignoring the facts in which the Court was required to make such observation. Any decision in that regard if required, one can refer to the decision of the Apex Court in the matter of **Union of India and others Vs. Dhanvanti Devi and others** : **(1996) 6**

SCC 44. Considering the said well settled law and taking into consideration the facts in Narayan Kudva's case, the points which were sought to be canvassed in the said matter and which were required to be adjudicated by the Division Bench, it cannot be said that the said decision lays down the law on the point that the competent authority acting under Section 19 of the SAFEMA is required to decide about the status of a person found in occupation of the property which has been forfeited under Section 7(3) of the SAFEMA, nor it can be said that the decision lays down law to the effect that moment a person found in occupation of the property forfeited under Section 7(3) of the SAFEMA claims to be a tenant of the property that the competent authority is required to adjudicate such claim before taking possession or evicting such person from such property. The observations made in Narayan Kudva's case were obviously in the matter where there was no dispute that the persons in occupation were tenants of the Central Government even after the forfeiture of the property.

24. The learned Advocate for the petitioners however drew our attention to various rent receipts stated to have been issued by the officers of the Central Government in relation to their occupation to the property and submitted that the same discloses undisputed fact about their leasehold right in the property in question. There is no substance in this contention. Mere acceptance of money having accepted by the Government officers as rent or compensation for occupation of such property by such person, that cannot give a status of tenant to such occupants. It is well settled that once the property vests in Central Government, any third person can occupy such property only with appropriate grant or permission by the competent authority dealing with the subject of grant of land or the property of the Central Government in favour of third person. Merely because a stranger occupies the property belonging to the Government that itself cannot be a ground to create right in favour of such a person to claim that he has interest in such land. In respect of rent amount paid by the petitioners, the same must be accepted by any Government

officer having authority to accept the money on behalf of the Government and further authority must be to accept the money as rent Any officer accepting the money and specifying the same as rent or compensation for occupation of the Government's land that itself cannot create either tenancy or licence in favour of such persons against the Government, nor it entitles him to occupy the Government land. Occupation of the Government's land has necessarily to be under authority of law, granted by duly empowered officer in that regard in favour of such persons and by following due process of law and not otherwise. It is not the contention of the petitioners that any such duly authorised authority had created the tenancy rights in favour of the petitioners in relation to the building in question. Neither there is plea in that regard nor any material on record.

25. Being so, merely because the petitioners herein were in occupation of the building of late Gawde cannot contend as a matter of right that they continued to be tenants even after forfeiture

of the property in terms of Section 7(3) of the SAFEMA. The settled law is very clear under Section 7(3) of SAFEMA that the moment the property is forfeited, it stands vested in the Central Government free from all encumbrances. The acceptance of the contentions which are advanced on behalf of the petitioners would virtually render Section 7(3) to be negatory and it will virtually defeat the very purpose for which SAFEMA was enacted.

26. As regards the decision in **Fatima Mohd.Amin's** case (supra) is concerned it is in relation to notice under Section 6(1) of SAFEMA. It was held therein that notice issued in that case under Section 6(1) of SAFEMA did not disclose that there existed any link or nexus between the property sought to be forfeited and the illegally acquired money of the detenu and therefore as the condition precedent for initiating proceedings under SAFEMA did not exist and therefore the order of forfeiture was not sustainable. Firstly the said matter relates to the challenge to the order of forfeiture of properties. In the case in hand

there is no challenge to the forfeiture of the property. In the case in hand, the challenge is confined only to the alleged claim of tenancy of the petitioners in relation to the property which has already been forfeited under Section 7(3) of the SAFEMA. Being so, by no stretch of imagination the decision in Fatima Amin's case can be of any help to the petitioners.

27. Our attention was drawn to paragraph-44 of **Amratlal's case** (supra) while strenuously arguing about the need for an opportunity of being heard to be offered to the petitioners. Again the observations in paragraph-44 in Amratlal's case relate to the holders or possessors of the properties of the convicts and detenus on their behalf and therefore challenge to the forfeiture of the property. That is not a case in relation to a person who claims to be tenant of the property which has already been forfeited, and where there is no challenge to the forfeiture of the property. The challenge in the matter in hand has been confined to the extent of the alleged claim of tenancy while admitting forfeiture of the

property of the landlord as well as admitting vesting of the property in the Government. Limited nature of dispute regarding the violation of principle of natural justice inasmuch as that the petitioners are not being heard before they are being evicted, is sought to be raised in the matter.

28. Once we hold that the property in question consequent to the forfeiture thereof in terms of Section 7(3) of SAFEMA stood vested in the Central Government free from all encumbrances, the question of granting opportunity of being heard to any person claiming any sort of interest in such property does not arise. The property having been vested in the Central Government free from encumbrances, all the so called encumbrances comes to an end and there cannot be an action or obligation on the part of the respondents to have further round of adjudication in relation to such interests or encumbrances. Law in that regard as being very clear, we do not find any substance in the submission sought to be made on behalf of the petitioners regarding violation of principles of

natural justice. There is no dispute about the identity of the property.

29. Section 19 of the SAFEMA clearly provides that where the property has been declared as forfeited, the competent authority may order the person affected as well as "any other person who may be in possession of the property" to surrender or deliver possession thereof to the competent authority within 30 days of the service of order. Obviously, therefore, that prerequisite of exercise of powers under Section 19 is the forfeiture of the property under Section 7(3). Once it is not in dispute that there is such an order in terms of Section 7(3) and that it has attained finality, in the absence of challenge thereto no fault can be found for initiating proceedings under Section 19 by the competent authority.

30. A grievance is made that Section 19 of the SAFEMA requires 30 days notice and in the matter in hand notice was given only for 7 days. There is no substance in this contention. It is true that the notice required the petitioners to

deliver the possession within seven days. Section 19 merely provides period which the competent authority may grant for delivery of possession. In any case the petitioners have enjoyed the property for more than ten years from issuance of the said notice. Being so, this contention is not required to be considered at all. Besides, the period can even be granted while dispossessing the petitioners.

31. Drawing our attention to the copy of the letter dated 5th July, 1995 issued by the respondent, it was sought to be contended that the said notice is addressed to the petitioners as tenants and thereby the claim of tenancy of the petitioners has been admitted or atleast not disputed by the respondents. As already observed above, creation of tenancy can only be by the competent authority. It is nobody’s case and it cannot be a case that the inspecting officer of the SAFEMA or NDPS, Mumbai is the competent authority to create tenancy in relation to any of the properties. Even otherwise the letter dated 5th July, 1995 reads thus :-

".. The competent Authority and Administrator vide order under Sec. 7(1) and 19(1) of the SAFEM (FOP) Act, 1976 dated 29.8.1977 has forfeited the following properties and further this order has been confirmed by the A.T.F.P. vide their appeal dated 27-7-1978.

1. Building on plot G on TPS II, santacruz, Juhu Koliwada, Bombay, and

2. Ownership Flat at Juhu Koliwada, flat No.9, 3rd flr, Basant Bahar, Juhu Tara Lane, Bombay-4.

. Further Lata Krishna Budha Gawde had filed a Misc. petition No.1462 of 1977 before the Bombay High Court which was dismissed by the Hon'ble Court on 19-6-1975 copy of the same is enclosed. You are, therefore, requested to hand

over the properties peacefully to the undersigned within 7 days from the receipt of this letter.

Yours faithfully,

sd/-
(S.L.GHATTAKKAY)
Inspecting Officer,
SAFEMA/NDPS,Bombay.

Copy to all tenant of building on plt. g. TPS. II, santacruz, Juhu Koliwada, Bombay."

. The above letter has been essentially addressed to : "The Legal Heirs of Shri Krishna budha gawde, r-15, Laxmi Sukhsagar, B, Gawde Road, Juhu Koliwada, Santacruz (E), Bombay 400 054."

32. Plain reading of the said letter, therefore, discloses that the letter has been issued in exercise of the powers under Section 19(1) of SAFEMA. It has been addressed to the

legal heir of the person whose property has been forfeited. Simultaneously copies thereto have been issued to all tenants in the building. Mere reference in the said letter to the occupants of the building as tenants that by itself cannot give any benefits of tenancy rights to the occupants of the said building the tenancy rights. At the cost of repetition, we may reiterate what has been stated earlier that creation of tenancy has to be by the competent authority. There is nothing on record to disclose that the Inspecting Officer of SAFEMA was authorised to create tenancy rights in respect of the property which was forfeited under Section 7(3) of SAFEMA. Once the property vests in Central Government it is only the authority which is empowered to create tenancy in relation to such a property, could have created tenancy rights in favour of the petitioners. Any transaction or correspondence with the third party by a government employee who has no authority for the same and which is in contravention of legal framework cannot be binding upon the government, nor it can create enforceable rights in favour of such third party. So mere reference in the order

under Section 19(3) of the petitioners to be tenants in order to call upon them for compliance of requirements under Section 19(1) of SAFEMA that would not create any right of tenancy in favour of the petitioners.

33. The learned Advocate however further drawing our attention to the expression which has been used in the said letter dated 5th July, 1995 - "all are required to have vacate their rooms within 7 days and hand over the property", submitted that the said expression disclose the cause of action to claim tenancy rights. As already stated above in order to claim a cause of action based on the said expression, it is primarily necessary for the petitioners to establish the lawful tenancy rights in the property. Merely because the petitioners were directed to vacate the premises that itself is not sufficient to create cause of action to claim tenancy rights.

34. It is then contended that even otherwise since the petitioners were not heard during the

SAFEMA proceedings and undoubtedly they are in possession of the premises, in order to evict the petitioners therefrom, the respondents cannot take law in their hand and at the most they can proceed against the petitioners by invoking the provisions of Public Premises Eviction Act. The contention is totally devoid of any substance. Once Section 7(3) of SAFEMA specifies that the property vests in the Central Government free from all encumbrances, and further Section 19(1) clearly empowers the authorities to evict any person in possession of such property. Once the property is forfeited under Section 7(3) of the SAFEMA, the question of invoking the provisions of Public Premises Eviction Act does not arise at all.

35. For all the reasons stated above, we do not find any substance in this Petition. The Petition, therefore, fails and is hereby dismissed. Rule is discharged. There shall be no order as to costs.

36. At this stage, the learned Advocate for the petitioners request that the order passed today

may be stayed and time may be granted to the petitioners to approach the Apex Court. Once we hold that the petitioners are not entitled to occupy the premises any further, question of granting further time to the petitioners only to challenge the order passed today does not arise. There is no right established in favour of the petitioners to continue to be in occupation of the premises and, therefore, the request in this regard is rejected. However, taking into consideration the petitioners' occupation for number of years we allow them to vacate the premises within a period of eight weeks from today and to that extent direct the respondents not to execute the order under Section 19(1) of SAFEMA for a period of eight weeks from today. It is however made clear that the petitioners shall not be entitled to induct any third party in the suit premises.

[R.M.S.KHANDEPARKAR,J.]

[SMT.V.K.TAHILRAMANI,J.]